

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONYELL GERARD JOHNSON,

Plaintiff,

Case No: 1:07-cv-77

v

HON. JANET T. NEFF

T. STEWART, *et al.*,

Defendants.

**OPINION AND ORDER ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on February 11, 2008 (Dkt 50). The Report and Recommendation was duly served on the parties. The Court has received objections from plaintiff (Dkt 51). In accordance with 28 U.S.C. § 636(b)(1), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court finds the objections are without merit.

Plaintiff argues that because he presented “genuine issues of fact” and his “issues must be accepted as true,” defendants should not be granted summary judgment on his First Amendment claim. Plaintiff’s argument reveals his misunderstanding of the summary judgment standard. In analyzing defendants’ motion for summary judgment, the Magistrate Judge was under no duty to accept plaintiff’s “issues” as true. Rather, the Magistrate Judge was required to view the *evidence* in the light most favorable to plaintiff. See generally *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Moreover, as the Magistrate Judge observed, the Court ultimately must determine whether there is sufficient evidence on which the jury could reasonably find for the plaintiff. See *Anderson*, 477 U.S. at 252.

Plaintiff's other argument is that defendants' conduct violates the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc. Plaintiff did not present this theory to the Magistrate Judge, and the Court therefore deems the argument waived. "While the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits de novo review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate." *Murr v. United States*, 200 F.3d 895, 902 n. 1 (6th Cir. 2000). See also *United States v. Waters*, 158 F.3d 933, 936 (6th Cir.1998) (citing *Marshall v. Chater*, 75 F.3d 1421, 1426-27 (10th Cir. 1996) ("issues raised for the first time in objections to magistrate judge's report and recommendation are deemed waived")).

THEREFORE, IT IS ORDERED that the objections are DENIED and the Report and Recommendation of the Magistrate Judge is APPROVED and ADOPTED as the opinion of the Court.

The Magistrate Judge did not address whether an appeal of this matter would be taken in good faith. The Court finds that plaintiff's RLUIPA argument, if preserved, is not plainly frivolous. Therefore, this Court declines to certify pursuant to 28 U.S.C. § 1915(a)(3) that there would be no good-faith basis for an appeal.

Dated: March 26, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge